

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb



Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

**TITLE 8: Division 1, Chapter 4, Subchapter 4, Article 35, Section 1905
of the Construction Safety Orders**

Helicopter Fueling**SUMMARY**

The proposed amendment is the result of the Occupational Safety and Health Standards Board (Board) Decision dated August 18, 2011, regarding OSHSB Petition No. 522 submitted by Mr. David Feerst, Director of Safety, Winco, Inc., (Petitioner). In an e-mail received on April 22, 2011, the Petitioner requested the Board amend the Construction Safety Orders (CSO) Section 1905(b) to remove an obsolete provision regarding fueling procedures for helicopters. Specifically, consistent with current Federal Aviation Administration (FAA) recommendations and the National Fire Protection Association (NFPA) prohibition on grounding the aircraft and fueling equipment, the Petitioner requested the Board to delete the grounding requirement before and during aircraft fueling. According to the Petitioner, eliminating the grounding requirement would reduce static electrical discharges eliminating any chance of a spark caused by a difference in potential.

Board staff notes that Section 1900 of the CSO states that regulations administered by the FAA are not superseded by these orders. An FAA Safety Alert for Operators dated November 23, 2010, states in part that, "Before fueling, the aircraft must be bonded to the fuel source to equalize static electricity between the fuel source and the aircraft. Grounding of the aircraft and/or fuel truck is no longer recommended because it does not prevent sparks at the fuel source, and the grounding cable may not be sufficient to discharge the electrical current." Further, Chapter 5.4.1 of NFPA 407-2007 states in part, "Grounding during aircraft fueling shall not be permitted." Title 8, CSO Section 1905 has not been amended since 1985.

Board staff contacted several area helicopter flying services regarding the practice of grounding and bonding the aircraft and fuel source. The operations contacted indicated that they are not grounding either the aircraft or the fuel source but strictly bonding the aircraft to the fuel supply. Consequently, to ensure Section 1905 is kept up to date in accordance with

the latest aircraft fueling and static discharge control methodology, Board staff proposes to amend Section 1905 consistent with the FAA and NFPA.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 1905. Fueling.

Existing subsection 1905(b) states, “The helicopter and fuel supply shall be securely bonded and grounded before and during fueling operations for static electrical discharge.” The proposed amendment revises Section 1905(b) by deleting the words, “...and grounded...” The amendment is necessary to ensure that, consistent with the latest FAA procedures and NFPA standards, helicopter operators implement or update their fueling procedures to reduce static discharge and minimize the potential for fire and explosion which could result in serious employee injury or fatality.

DOCUMENTS RELIED UPON

1. Petition No. 522 from Mr. David Feerst received via e-mail transmission, April 22, 2011.
2. OSHSB Petition No. 522, Decision dated August 18, 2011.
3. The National Fire Protection Association 407-2007, “Standard for Aircraft Fuel Servicing.”
4. Department of Transportation, Federal Aviation Administration (FAA), Safety Alert for Operators 10020, dated November 23, 2010.
5. FAA Advisory Circular number 150/5230-4A, Aircraft Fuel Storage, Handling, and Dispensing on Airports, dated June 18, 2004.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The proposal reduces employer requirements by eliminating the need to ground the helicopter and fueling supply during fueling. The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

This proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

This proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action